UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA STATESVILLE DIVISION 5:18-cv-148-FDW

GARY D. GOCHIE,)
Plaintiff,)
vs.	ORDER
KEN BEAVER, et al.,)
Defendants.)

THIS MATTER is before the Court on the North Carolina Attorney General's Office Motion to Deem Waivers of Service of Summons Timely Filed for Defendants Ken Beaver, Eric Dye, and Kenneth Poteat, (Doc. No. 36), and the North Carolina Department of Public Safety's ("NCDPS") sealed Notice informing the Court that it has been unable to procure a waiver of service of process for Defendant **Elizabeth Nicole Powell**, (Doc. No. 35).

In the Motion to Deem Waivers of Service of Summons Timely Filed, Counsel asks the Court to accept the waivers and grant counsel the remaining time that would have been allotted to it, had the waivers been timely filed by the original deadline, so that it can complete an investigation into whether it will provide a defense to Defendants and, if so, to allow an attorney to make an appearance or other responsive pleading on their behalves. (Id.). Counsel represents that the failure to timely file the executed Waivers of Service is not the fault of Defendants and that granting this Motion will not prejudice Plaintiff. The Motion will be granted.

In the Notice, NCDPS has provided the last known address of Defendant Powell whom, it represents, is currently on Family Leave. The Clerk of Court is directed to notify the United States Marshal that Defendant Powell needs to be served with the summons and Second Amended

Complaint, (Doc. No. 20), in accordance with Rule 4 of the Federal Rules of civil Procedure. If

Defendant Powell cannot be served at the address provided by NCDPS, the U.S. Marshal shall be

responsible for locating her home address so that she may be served. See 28 U.S.C. § 1915(d) (in

actions brought in forma pauperis under § 1915, "[t]he officers of the court shall issue and serve

all process, and perform all duties in such cases."); Fed. R. Civ. P. 4(c)(3) ("At the plaintiff's

request, the court may order that service be made by a United States Marshal or deputy marshal or

by a person specially appointed by the court. The court must so order if the plaintiff is authorized

to proceed in forma pauperis under 28 U.S.C. § 1915...."). If the U.S. Marshal is unable to obtain

service on Defendant Powell, the U.S. Marshal shall inform the Court of the reasonable attempts

to obtain service. The U.S. Marshal shall not disclose Defendant's home address to the pro se

incarcerated Plaintiff and shall file any document containing such address under seal.

IT IS THEREFORE ORDERED that:

1. The Motion to Deem Waivers of Service of Summons Timely Filed, (Doc. No. 36), is

GRANTED as stated in this Order.

2. The U.S. Marshal shall use all reasonable efforts to locate and obtain service on

Defendant **Powell** at her home address. If the U.S. Marshal is unable to obtain service

on Defendant Powell, the U.S. Marshal shall inform the Court of the reasonable

attempts to obtain service.

3. The Clerk of Court is respectfully instructed to mail a copy of the Amended Complaint,

(Doc. No. 20), the sealed Notice containing Defendant Powell's last known address,

(Doc. No. 35), and this Order to the U.S. Marshal.

Signed: July 30, 2019

Frank D. Whitney

Chief United States District Judge